IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANA JENNINGS and JOSEPH A. FURLONG, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. CARVANA, LLC, Defendant.	Case No. 5:21-cv-05400

NOTICE OF SUPPLEMENTAL AUTHORITY

By their undersigned counsel, Plaintiffs provide the Court with notice of a recent supplemental authority related to the pending motion to compel arbitration (ECF. 18) and arguments advanced by Defendant in this action—i.e. *Morgan v. Sundance, Inc.*, No. 21-328, 2022 WL 1611788 (U.S. May 23, 2022). In supplement Plaintiffs state:

The recent decision by the Supreme Court in *Morgan v. Sundance* is persuasive authority for Plaintiffs' argument that the statutory one document rule under Pennsylvania's Motor Vehicle Sales Finance Act ("MVSFA") bars application of the arbitration agreement/class action waiver herein. The Court held therein that the federal rule governing waiver of rights or defenses did not require a showing of prejudice to determine whether the defendant had waived its right to arbitration by litigating the case for a period of time prior thereto. *Morgan*, 2022 WL 1611788, at *3. In so holding, relevant to the arguments and issues before this Court in the pending motion, the Supreme Court explained:

> If an ordinary procedural rule—whether of waiver or forfeiture or what-have-you—would counsel against enforcement of an arbitration contract, then so be it. The federal policy is about treating arbitration contracts like all others, not about fostering arbitration. See *ibid.*; *National Foundation for Cancer Research* v. *A. G. Edwards & Sons, Inc.*, 821 F. 2d 772, 774 (CADC 1987) ("The Supreme Court has made clear" that the FAA's policy "is based upon the enforcement of contract, rather than a preference for arbitration as an alternative dispute resolution mechanism").

Id. at *4.

Here, Carvana attempts by its Motion to override the MVSFA one document rule – a statutory construct neutral towards arbitration as much as the federal procedural rule in *Morga*n, by the mere fact that the MVSFA provision can have a negative impact in fostering arbitration in this matter. But the Court does not have the authority under Morgan to so conclude herein. "[T]he FAA's 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules." *Id.*

In light of the holding in *Morgan*, Carvana's argument should be rejected as an improper imposition upon a legitimate legislative prerogative to require material terms of a contract be included in one document. The MVSFA is neutral as to the substance of the arbitration/class waiver by requiring that all terms be contained in a single document and Carvana ignored that requirement. Therefore, its arbitration agreement cannot be enforced since it violates the requirements of the MVSFA.

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Dated: May 31, 2022

/s/Robert P. Cocco
Robert P. Cocco, Esquire
Attorney I.D. No. 61907
1500 Walnut St., Ste. 900
Philadelphia, PA 19102

/s/ Phillip R. Robinson
Phillip R. Robinson
Admitted Pro Hoc Vice
Consumer Law Center LLC
8737 Colesville Road, Suite 308
Silver Spring, MD 20910
(301) 448-1304
phillip@marylandconsumer.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing was sent to all counsel of record through the Court's CM/ECF system when filed with the Court.

/s/Robert Cocco
Robert Cocco